COURT NO.7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 621 of 2001
(Old Case No. 2223 of 1989)

Babu Ram son of Balswaroop,
Resident of Village Jivalgarh,
Police Station Kirti Nagar,
District : Tehrigarhwal.

.....Appellant

Versus

State .....Opposite Party

Sri Kailash Chandra Joshi, Amicus Curiae for the appellant.
Sri Harish Pujari, learned A.G.A. for the State.

Dated: 18.08.2007

Hon'ble Dharam Veer, J.

This criminal appeal has been preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) against the judgment and order dated 03.11.1989 passed by Sessions Judge, Tehri Garhwal in Sessions Trial No.32 of 1988, State v. Babu Ram, whereby the learned Sessions Judge has convicted the present appellant under Sections 363 and 366 of The Indian Penal Code, 1860 (hereinafter referred to as IPC) as awarded sentence to undergo rigorous imprisonment for a period of one and half years under each Section and it was directed that both the sentences shall run concurrently.

2. The prosecution case is that the complainant Sri Buddhi Lal lodged an FIR in Police Station Kirtinagar, District Tehri Garhwal with the allegations that on the date of incident the complainant had come to his house on leave and on 15.01.1988 at 11.00 A.M. the daughter

of the complainant Km. Sunita, aged about 13 years had gone to take water from Nausila Dhara (waterfall) situated at Rishikesh-Srinagar Motor Road. The complainant heard noise of crying of his daughter Sunita. On hearing the noise the complainant and other person namely, Mohnanand and Kidu reached the place of occurrence where they saw that the present appellant Babu Ram was standing there holding Sunita (the daughter of the complainant), who was crying, in his lap. On asking, Sunita told the complainant (father of Sunita) that appellant Babu Ram had caught her to be run away and he was asking her to go with him. On coming the complainant and other persons the girl was released from the possession of the present appellant. Complainant has further stated that the present appellant had also taken his elder daughter without her consent and the case about that was pending in the Court of Sessions Judge Tehri Garhwal and the intention of the appellant was to run away taking the daughter of complainant, namely, Sunita. The F.I.R. is Ex.Ka-5. On the basis of that FIR the chick report was prepared i.e. Ex.Ka-1 by the Head Contable Bhanwar Singh. The entry was made in the G.D., the copy of G.D. is Ex.Ka-4. The investigation of the case was entrusted to S.I. Satendra Singh Sirohi, who prepared the site plan of the place of occurrence i.e. Ex.Ka-2. During the course of the investigation, the Investigating Officer recorded the statement of the witnesses and after completing the investigation he submitted the charge-sheet i.e Ex.Ka-3 in the Court of Chief Judicial Magistrate, Tehri Garhwal.

3. The Chief Judicial Magistrate committed the case to the Court of Session under Section 209 Cr.P.C. on 21.10.1988 after applying the provisions under Section 207 Cr.P.C.

4. Learned Sessions Judge framed charges against the present accused-appellant on 20.01.1989 under Sections 363 & 366 IPC. The charges were read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W. 1 Sunita (victim), P.W.2 Mohnanand (eye witness), P.W.3 S.I. Satendra Singh Sirohi (Investigating Officer, P.W.4 Buddhi Lal (father of the victim Sunita). Thereafter, the statement of the present appellant had been recorded under Section 313 Cr.P.C., who had denied the allegations made against him and stated that he has falsely been implicated in the case due to the enmity.

6. After appreciating the evidence and hearing learned counsel for both the parties, the learned Sessions Judge has convicted the appellant under Sections 363 & 366 IPC and sentenced rigorous imprisonment for a period of one and half years under each Section and it was directed that both the sentences should run concurrently. Against the judgment and order dated 03.12.1989 the appellant has filed the present appeal.

7. I have heard Sri Kailash Chandra Joshi, Amicus Curiae for the appellant and Sri Harish Pujari, learned Additional Government Advocate for the State

and perused the entire record of the trial court and the instant appeal.

8. To prove its case the prosecution has examined PW.1 Sunita, who has stated in her statement recorded on 19.05.1989 that appellant-Babu Ram, who is present in the court, is known to her. Buddhi Lal is her father and she is living with her father. She has stated her age to be 14 years and further stated that on the date of incident she was also living with her father. She has further stated that about 1-1/4 years before at about 11.00 A.M. she had gone to take water from Nausila Dhara (waterfall). Appellant Babu Ram reached there and told her to accompany him to go to Bijnor. When she refused to go with him, he picked her in his lap and moved towards Rishikesh then she cried. On hearing her noise, her father-Buddhi Lal, Mohnanand and Kidu reached at the place of occurrence and they had got her released from the possession of appellant-Babu Ram, who ran way towards Rishikesh. She has further stated that appellant-Babu Ram was making her to go with him forcibly without her own will. This witness was cross-examined by the defence counsel at length but nothing has come out from her evidence, which will create any doubt. The evidence of this witness is trustworthy, reliable, natural and believable.

9. P.W.2 is Mohnanand, who has stated in his statement that appellant-Babu Ram and Sunita daughter of Buddhi Lal, are known to him. The said incident was happened on 15.01.1988 at 11.00 A.M. when he was getting his ponies (Khachchar) grazed near Nausila Dhara (waterfall). Appellant-Babu Ram was

holding Sunita in his lap and Buddhi Lal was telling to appellant- Babu Ram that he had taken one of his daughters and now wanted to take the whole family. After hearing the cries of the daughter of Buddhi Lal, P.W.2 reached the place of occurrence and on asking Sunita told him that appellant-Babu Ram wanted to take her to Bijnor. After some efforts they had succeeded in getting Sunita released from the possession of appellant-Babu Ram, who later on ran away from the place of occurrence. This witness was also cross-examined by the counsel for the defence but nothing has come out from his statement which will create any doubt. The evidence of this witness is also trustworthy, natural and reliable.

10. P.W.3- S.I. Sri Satendra Singh Sirohi, who is the Investigating Officer. He has submitted in his statement that he was posted as Sub Inspector on 15.01.1988 at Police Station Kirtinagar and on the written report of Buddhi Lal, the case was registered at Police Station by the Head Constable Bhanwar Singh on 15.01.1988 at 1.00 P.M. He has further stated that Head Constable Bhanwar Singh was posted with him and he is well acquainted with the hand writing of Head Constable Bhanwar Singh. He has identified the chick report which was prepared by Head Constable Bhanwar Singh i.e. Ex.Ka-1 and the entry was made in G.D. by Head Constable Bhanwar Singh. He further stated that the investigation of the case was initiated from 15.01.1988 and he has recorded statement of Buddhi Lal, Sunita and Mohnanand on the same day i.e. 15.01.1988. He has inspected the place of occurrence and prepared a site plan on the pointing out of the complainant and prepared the map i.e. Ex.Ka-2. After

completing the investigation and recording the statement of the witnesses he has filed the charge-sheet which is in his hand writing i.e. Ex.Ka-3.

11. P.W.4, Buddhi Lal, who is the complainant and father of the victim Sunita. He has stated in his statement that Babu Ram is known to him and Sunita is his daughter. The said incident was taken place on 15.01.1988 at about 11.00 A.M. He had gone to Kandoli to purchase the sugar. When he was coming back from Kandoli, Sunita had come to take water from Nausial Dhara (waterfall) and the appellant Baubu Ram was holding Sunita in his lap. Sunita was crying. Hearing the cries of Sunita, he had reached there. AT that time Mohnanand and Kidu had also arrived there. He has further stated that he had caught appellant-Babu Ram but he escaped from his hand and Sunita was released from the possession of appellant-Babu Ram. On asking, Sunita told him that appellant-Babu Ram was taking her forcibly to Bijnore. After that he went to Kirtinagar where he got report prepared from the petitioner writer and has signed on that report i.e. Ex.Ka-5, which was submitted to Kirtinagar Police Station. He has further stated that elder sister of Sunita is Saku, who had also been forcibly taken by the present appellant, for that the case was going on against appellant-Babu Ram in which he was convicted and sentenced for four years imprisonment. This witness was also cross-examined at length but nothing has come out from the statement which will create any doubt, as such, the evidence of this witness is also trustworthy, natural and reliable.

12. After that the statement of the accused-appellant was recorded under Section 313 Cr.P.C. who denied the allegations made against him and in defence he has stated that he has falsely been implicated in this case due to enmity.

13. Learned counsel for the appellant has submitted that on the basis of the above said evidence no case under Sections 363 & 366 IPC is made out against the appellant.

14. As the above said incident was taken place on 15.01.1988 at Rishikesh-Srinagar Motor Road at Nausila Dhara (Waterfall) where the victim Sunita had gone to take water and at that time the present appellant forcibly taken her in his lap and tried to take her to Bijnore forcibly. After hearing the cries of the victim-Sunita, the father of the victim Buddhi Lal, who was coming from Kandoli after purchasing the sugar reached at the place of occurrence. After hearing the noise of victim Sunita, P.W.2 Mohnanand and Kidu also arrived at the place of occurrence and with the intervention of these three persons, Sunita was released from the possession of the present appellant-Babu Ram and the appellant ran away from that place toward Rishikesh. Just after the incident, complainant Buddhi Lal has lodged the FIR on the same day i.e. 15.01.1988 at 1.00 P.M. at Police Station Kirtinatar. This fact is supported with the statement of P.W.1-Sunita, P.W.-2-Mohanand and P.W.-4-Buddhi Lal. It is also stated that the present appellant was convicted by the trial Court for taking the elder sister of Sunita forcibly and sentenced him for four years R.I.

15. From the statements and the evidence above said, it is well established by the prosecution beyond reasonable doubt that the present appellant had taken Sunita, who was 13 years old at the time of incident, forcibly from the Nausila Dhara (waterfall) situated at Rishikesh-Srinagar Motor Road in his lap and tried to take her to Bijnore against her consent. The victim was living at that time with her father Sri Buddhi Lal.

16. From the above said evidence, it is clear that the case is proved against the appellant beyond reasonable doubt. FIR is prompt. The appeal is devoid of merit and is liable to be dismissed. Conviction and sentence awarded by the trial court is liable to be confirmed.

17. Sri Kailash Chandra Joshi, Amicus Curiae for the appellant has submitted that the appellant is 83 years old and he was in jail from 15.01.1988 to 03.03.1988 and he may be released on the basis of sentence already undergone by him. On the other hand learned Additional Government Advocate has submitted that the appellant is professional of kidnapping and selling the girls. In the charge-sheet submitted by the Investigating Officer it was mentioned that previous to this incident the present appellant was convicted and sentenced for four years R.I. by the order of the learned Sessions Judge, Tehri Garhwal on 22.01.1988 under Section 366 IPC. The present appellant was also convicted under Section 60 of The Excise Act by the S.D.M., Kirtinagar on 24.03.1971 on the condition of good conduct for one year on executing *Muchalka* and he was also convicted under Section 60 of The Excise Act by

the S.J.M., NNR on 21.08.1979 on the condition of good conduct for one year.

18. Learned Additional Government Advocate has submitted that from the perusal of the above said conviction and sentence mentioned in the charge-sheet the appellant is not deserved for the lenient view or lesser sentence.

19. I have perused the statement of witnesses wherein P.W.-1 Sunita has stated in her statement that on 15.01.1988 at about 11.00 A.M. she had gone to take water from Nausila Dhara (waterfall). Appellant Babu Ram reached there and told her to accompany him to go to Bijnor. When she refused to go with him, he picked her in his lap and moved towards Rishikesh then she had cried. On hearing her noise, her father-Buddhi Lal, Mohnanand and Kidu had reached at the place of occurrence and they had got her released from the possession of appellant-Babu Ram, who had fled towards Rishikesh. P.W.2-Mohnanand has stated in his statement that the said incident was happened on 15.01.1988 at 11.00 A.M. when he was getting his ponies (Khachchar) grazed near Nausila Dhara (waterfall). Appellant-Babu Ram was holding Sunita in his lap and Buddhi Lal was telling to appellant-Babu Ram that he had taken one of his daughters and now wanted to take the whole family. After hearing the cries of the daughter of Buddhi Lal, P.W.2 reached the place of occurrence and on asking, Sunita told him that appellant-Babu Ram wanted to take her to Bijnor. After some efforts they had succeeded in getting Sunita released from the possession of appellant-Babu Ram, who ran away from the place of occurrence.

P.W.4-Buddhi Lal, who is the complainant and father of the victim Sunita, has stated in his statement that the said incident was taken place on 15.01.1988 at about 11.00 A.M. He had gone to Kandoli to purchase the sugar. When he was coming back from Kandoli, Sunita had come to take water from Nausial Dhara (waterfall) and the appellant Babu Ram was holding Sunita in his lap. Sunita was crying. Hearing the cry of Sunita, he reached there. At that time Mohnanand and Kidu also arrived there. He has further stated that he had caught appellant-Babu Ram but he escaped from his hand and Sunita was released from the possession of appellant-Babu Ram. On asking, Sunita told him that appellant-Babu Ram was taking her forcibly to Bijnore. Hence, the statements of P.W.2 and P.W.4 are fully corroborated with the statement of the victim Sunita (P.W.-1).

20. From the perusal of the charge-sheet, it is evident that the appellant has been convicted in three other cases prior to this case. One case out of these three cases is identical to this case in which the appellant has been convicted and sentenced for four years R.I. under Section 366 IPC by the learned Sessions Judge, Tehri Garhwal on 22.01.1988.

21. After going through the statement of the witnesses, charge-sheet, impugned judgment and other documents filed alongwith this appeal as well as lower court record and taking the totality of the circumstances into consideration, I find the sentence awarded by the learned Sessions Judge, Tehri Garhwal, as per the facts and circumstances of the case, justified which is only one and half years R.I. under each Section and it was also

rightly directed that both the sentence should run concurrently. Hence, the argument of the learned counsel for the appellant is misconceived and not tenable in the eye of law.

22. Accordingly, the appeal is dismissed. Conviction and sentence awarded by the court below is confirmed. Let the order of this Court be sent to the trial Court for compliance immediately.

(Dharam Veer, J.)

18.08.2007
RBS